United Nations

Report of the Ad Hoc Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel

General Assembly
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Supplement No.22 (A/49/22)

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I. INTRODUCTION

1. The Ad Hoc Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel, established by the General Assembly in its resolution 48/37 of 9 December 1993, held its first session at United Nations Headquarters from 28 March to 8 April 1994. On the basis of the same resolution, it held a second session, also at United Nations Headquarters, from 1 to 12 August 1994.

2. The Ad Hoc Committee was open to all Member States in accordance with paragraph 1 of resolution 48/37. 1/

3. The first session was opened by Mr. Hans Corell, Under-Secretary-General, the Legal Counsel, who represented the Secretary-General and made an introductory statement.

4. At both sessions of the Ad Hoc Committee, Ms. Jacqueline Dauchy, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Ad Hoc Committee; Mr. Andronico O. Adede, Deputy Director (Codification Division, Office of Legal Affairs), acted as Deputy Secretary; and Ms. Mahnoush Arsanjani and Ms. Christiane Bourloyannis-Vrailas, Legal Officers, and Ms. Darlene Prescott, Associate Legal Officer (Codification Division, Office of Legal Affairs), acted as assistant secretaries.

5. At the 1st meeting of the first session, on 28 March 1994, the Ad Hoc Committee elected its Bureau, as follows:

Chairman: Mr. Philippe Kirsch (Canada)

Vice-Chairmen: Mr. Raúl Alberto Ricardes (Argentina)

Mr. Saeid Mirzaee-Yengejeh (Islamic Republic of Iran)

Mr. Volodymyr D. Khandogy (Ukraine)

Rapporteur: Ms. Pascaline Boum (Cameroon)

6. The three Vice-Chairmen being unavailable for the second session, the Ad Hoc Committee, at the 2nd meeting of its second session, elected three new Vice-Chairmen as follows:

Ms. Silvia A. Fernández de Gurmendi (Argentina)

Mr. Hossein Enayat (Islamic Republic of Iran)

Mr. Oleksandr F. Motsyk (Ukraine)

7. The agendas the Committee adopted for its two sessions (A/AC.242/L.1 and L.4) were identical and read as follows:

1. Opening of the session.

2. Election of officers.

3. Adoption of the agenda.

4. Organization of work.

5. Elaboration, pursuant to paragraph 1 of General Assembly resolution 48/37 of 9 December 1993, of an international convention dealing with the safety and security of United Nations and associated personnel, with particular reference to responsibility for attacks on such personnel.

6. Adoption of the report.

8. At both its first and second sessions, the Ad Hoc Committee decided to constitute itself as a Working Group of the Whole for the consideration of the texts before it. The Bureau and the secretariat of the Ad Hoc Committee also served as the Bureau and the secretariat of the Working Group.

9. The Ad Hoc Committee, having received a request for participation as an observer in the work of the Committee and its Working Group from the Permanent Observer Mission of Switzerland to the United Nations, decided to grant that request.

10. The Ad Hoc Committee, having received a similar request from the International Committee of the Red Cross (ICRC), also decided to grant that request.

II. PROCEEDINGS AT THE FIRST SESSION

11. At its first session, the Ad Hoc Committee decided to hold a brief general debate. 2/

12. Also at its first session, the Ad Hoc Committee had before it a proposal submitted jointly by New Zealand and Ukraine (A/AC.242/L.2 and Corr.1), 3/ as well as a working document submitted by Denmark, Finland, Iceland, Norway and Sweden (A/AC.242/L.3) 3/ and a note by the Secretary-General (A/AC.242/1). It decided to take as a basis for its work the joint proposal by New Zealand and Ukraine, on the understanding that the "elements" of the working paper submitted by the five Nordic countries would be examined in conjunction with the articles of the joint proposal with which they were connected.

13. The Working Group proceeded accordingly and also considered a number of amendments and proposals for new articles which were submitted to it as the work proceeded. 4/

14. The Working Group proceeded in three stages. In the first stage (1st to 9th meetings), it examined on first reading the various articles of the joint proposal. 5/ At the 9th meeting, representatives of the Office of Legal Affairs and of the Office of the United Nations Security Coordinator addressed the Working Group and answered questions raised from the floor in relation to the practical and legal issues encountered by the United Nations in ensuring the safety and security of United Nations and associated personnel in the framework of United Nations operations. A transcript of this exchange of views was subsequently made available to delegations.

15. In the second stage (9th and 10th meetings), the Working Group reviewed on second reading articles 1 and 2 of the joint proposal. 6/

16. In a third stage, the Working Group agreed that the work would continue in the framework of two consultation groups respectively entrusted with articles 1-9 and 10-27. Mr. Wael Aboulmagd (Egypt) and Ms. Silvia Fernández de Gurmendi (Argentina) acted as coordinators of the consultation groups. The work of the consultation groups resulted in a "negotiating text", which consisted of articles 3-27. Although there was a general discussion on articles 1 (definitions) and 2 (scope of the Convention), no text was included for those articles in the negotiating text.

17. At the conclusion of its first session, the Ad Hoc Committee decided, pursuant to the authorization contained in paragraph 2 of General Assembly resolution 48/37, to hold a further session from 1 to 12 August 1994. It furthermore agreed to take, as a basis for its work at that session, the negotiating text referred to in paragraph 16 above, on the understanding that it was only intended to serve as a negotiating text without committing or prejudicing the position of any delegation on any of its provisions. Some delegations expressed reservations about particular provisions in the negotiating text and reserved their right to introduce new provisions at the next session.

III. PROCEEDINGS OF THE SECOND SESSION

18. In accordance with the decision referred to in paragraph 17 above, the Working Group took as a basis for its work the negotiating text referred to in paragraph 16 above, on the understanding reflected in paragraph 17 above.

19. In the course of its work, the Working Group heard a statement from, and had an exchange of views with, the representative of the Office of the United Nations Security Coordinator. It was also apprised of the content of communications received by the Chairman from that same Office, from the United Nations High Commissioner for Refugees and from the Executive Director of the World Food Programme (WFP).

20. The Working Group started its work with a brief review of the negotiating text. It then entrusted an open-ended Informal Working Group, chaired by Ms. Fernández de Gurmendi, Vice-Chairman of the Ad Hoc Committee, with the preparation of a negotiating text for articles 1 (definitions) and 2 (scope of the Convention).

21. At the 5th meeting of the Working Group, on 5 August 1994, the Chairman of the Informal Working Group introduced a single article (numbered 1-2) on scope and definitions which was proposed by her to facilitate the discussion in the Working Group.

22. At its 6th meeting, on 8 August 1994, the Working Group had before it a consolidated negotiating text which contained the article 1-2 referred to above, followed by articles 3 to 27 of the negotiating text worked out at the first session.

23. From its 6th to 12th meetings, the Working Group discussed articles 1-2 to 26 bis of the consolidated negotiating text, as well as amendments and proposals for new articles submitted at the first and second sessions of the Ad Hoc Committee. 4/ The Working Group also had before it written comments on the basic texts under consideration. 7/

24. A summary of that discussion on an article-by-article basis is to be found in annex I to the present report.

IV. REVISED NEGOTIATING TEXT AS IT EMERGED FROM THE WORK OF THE AD HOC COMMITTEE

25. The work of the Ad Hoc Committee at its two 1994 sessions resulted in the revised negotiating text reproduced in paragraph 28 below. This text is intended to serve as a negotiating text without committing or prejudicing the position of any delegation on any of its provisions. Some delegations expressed reservations about particular provisions in the text and reserved their right to introduce new provisions at a later stage.

26. In introducing the revised negotiating text, the Chairman indicated that the new text was the result of consultations among delegations from all regional groups and aimed at improving the original negotiating text to the extent possible. He noted that certain important differences had not yet been bridged as regards, in particular, the nature of the operations and the categories of personnel to be covered by the future instrument. While recognizing that the absence of agreement on the scope of application and on definitions complicated the discussion on the rest of the text, he pointed out that those uncertainties affected only a limited number of articles and that it had thus been possible to make progress on various aspects. He singled out in that context articles 3, 4, 5, 9 and 21.

27. A number of delegations agreed that the revised negotiating text provided an improved basis for further work and expressed satisfaction at the progress achieved on the extremely important issue of the safety and security of personnel involved in United Nations operations. It was stressed that the matter was an urgent one on which the momentum should not be lost. Emphasis was also placed on the need for careful reflection on the results achieved so far. Some delegations felt that, as long as the scope of the convention was not determined, discussion of the other articles of the revised negotiating text would present difficulties.

28. The revised negotiating text reads as follows:

REVISED NEGOTIATING TEXT

The States Parties to this Convention,

Recognizing that United Nations operations are impartial and international in nature and that such operations are conducted exclusively in the common interest of the international community;

...

Have agreed as follows:

Article 1-2

Scope of application and definitions

1. This Convention applies in respect of United Nations and associated personnel and United Nations operations, as defined in paragraph 2 of this article.

2. For the purposes of this Convention:

(a) "United Nations personnel" means:

(i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation;

(ii) Other officials and experts on mission of the United Nations and its specialized agencies who are present in an official capacity in the area where a United Nations operation is being conducted;

(b) "Associated personnel" means:

(i) Persons assigned by a Government or an intergovernmental organization with the agreement of the competent organ of the United Nations;

(ii) Persons engaged by the Secretary-General of the United Nations or by a specialized agency;

(iii) Persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency;

to carry out activities directly connected with a United Nations operation;

(c) "United Nations operation" means:

(i) An operation for the purpose of maintaining or restoring international peace and security established by the competent organ of the United Nations and conducted under its authority;

(ii) An operation for the purpose of providing emergency humanitarian assistance established by the competent organ of the United Nations, where the Security Council or the General Assembly decides that there exists an exceptional risk to the safety of the personnel participating in such an operation;

(d) "Host State" means a State in whose territory a United Nations operation is conducted;

(e) "Transit State" means a State, other than the host State, in whose territory United Nations personnel and associated personnel are in transit or temporarily present in connection with a United Nations operation.

3. This Convention shall not apply to United Nations and associated personnel participating in a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in respect of which any such personnel are engaged as combatants in an international armed conflict of the kind referred to in common article 2 of the Geneva Conventions of 12 August 1949.

Article 3

Identification

1. The military and police components of a United Nations operation and their vehicles, vessels and aircraft shall bear distinctive identification. Other personnel, vehicles, vessels and aircraft involved in the United Nations operation shall be appropriately identified unless otherwise decided by the Secretary-General or his representative.

2. All United Nations and associated personnel shall carry appropriate identification documents.

Article 4

Agreements on the Status of the Operation

The host State and the United Nations shall conclude as swiftly as possible an agreement on the status of the United Nations operation and all personnel engaged in the operation including, inter alia, provisions on privileges and immunities for military and police components of the operation.

Article 5

Transit

A transit State shall facilitate the unimpeded transit of United Nations and associated personnel and their equipment to and from the host State.

Article 6

Respect for laws and regulations

1. Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, United Nations and associated personnel shall:

(a) Respect the laws and regulations of the host State and the transit State; and

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties;

2. The Secretary-General or his representative shall take all appropriate measures to ensure the observance of these obligations.

Article 7

Right of self-defence

Nothing in this Convention shall be construed so as to derogate from the right to act in self-defence.

Article 8

Duty to ensure the safety and security of United Nations and associated personnel

1. United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate.

2. States Parties shall take all appropriate measures to ensure the safety and security of United Nations and associated personnel. In particular, States Parties shall take all appropriate steps to protect United Nations and associated personnel who are deployed in their territory from attacks or other acts of violence referred to in article 10 of this Convention.

3. States Parties shall cooperate with the United Nations and other States Parties, as appropriate, in the implementation of this Convention, particularly in any case where the host State is unable itself to take the required measures.

Article 9

Duty to release or return personnel captured or detained

If United Nations and associated personnel engaged in a United Nations operation are captured or detained in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949.

Article 10

Crimes against United Nations personnel

1. The intentional commission of:

(a) A murder, kidnapping or other attack upon the person or liberty of any United Nations and associated personnel;

(b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations and associated personnel likely to endanger his or her person or liberty;

(c) A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;

(d) An attempt to commit any such attack; and

(e) An act constituting participation as an accomplice in any such attack, an attempt to commit such attack, or organizing, ordering or inciting others to commit or to attempt to commit such attack

shall be made by each State Party a crime under its national law.

2. Each State Party shall make these crimes punishable by appropriate penalties which shall take into account their grave nature.

Article 11

Establishment of jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 10 in the following cases:

(a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State.

2. A State Party may also establish its jurisdiction over any such crime when it is committed:

(a) By a stateless person whose habitual residence is in that State; or

(b) With respect to a national of that State; or

(c) In an attempt to compel that State to do or to abstain from doing any act.

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 10 in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to article 16 to any of the States Parties referred to in paragraphs 1 and 2 above.

5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 12

Prevention of crimes against United Nations and associated personnel

States Parties shall cooperate in the prevention of the crimes set out in article 10, particularly by:

(a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;

(b) Exchanging information in accordance with their national law and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

Article 13

Communication of information

1. Under the conditions provided for in its national law, the State Party in which a crime set out in article 10 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to the Secretary-General and, directly or through the Secretary-General, to all other States concerned all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever a crime set out in article 10 has been committed, any State Party which has information concerning the victim and circumstances of the crime shall endeavour to transmit such information, under the conditions provided for in its national law, fully and promptly to the Secretary-General and the State or States concerned.

Article 14

Measures to ensure prosecution or extradition

1. Where the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its national law to ensure that person's presence for the purpose of prosecution or extradition.

2. Measures taken in accordance with paragraph 1 above shall be notified, in conformity with national law and without delay, to the Secretary-General and, either directly or through the Secretary-General, to:

(a) The State where the crime was committed;

(b) The State or States of which the alleged offender is a national or, if such person is a stateless person, in whose territory that person has his or her habitual residence;

(c) The State or States of which the victim is a national; and

(d) Other States concerned.

Article 15

Prosecution of alleged offenders

The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of an ordinary offence of a grave nature under the law of that State.

Article 16

Extradition of alleged offenders

1. To the extent that the crimes set out in article 10 are not extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the procedural provisions and the other conditions of the law of the requested State.

4. Each of the crimes set out in article 10 shall be treated, for the purposes of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also with the territories of the States Parties referred to under paragraph 1 or 2 of article 10.

Article 17

Mutual assistance in criminal matters

1. States Parties shall afford each other, in accordance with their respective laws, the greatest measure of assistance in connection with investigations undertaken or proceedings brought in respect of the crimes set out in article 10, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 above shall not affect obligations concerning mutual assistance embodied in any other treaty.

Article 18

Fair treatment for alleged offenders

1. Any person regarding whom proceedings are being carried out in connection with any of the crimes set forth in article 10 shall be guaranteed fair trial and full protection of the rights of the alleged offender at all stages of the proceedings.

2. Any alleged offender shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State or States of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, which that person requests and is willing to protect that person's rights; and

(b) To be visited by a representative of that State or those States.

Article 19

Notification of outcome of proceedings

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General, who shall transmit the information to other States Parties.

Article 20

Dissemination

The States Parties undertake to disseminate this Convention as widely as possible and, in particular, to include the study thereof, as well as relevant provisions of international humanitarian law, in their programmes of military instruction.

Article 21

Savings clauses

1. Nothing in this Convention shall in any way affect the applicability of international humanitarian law and universally recognized standards of international human rights in relation to the protection of United Nations operations and United Nations and associated personnel or the responsibility of such personnel to respect such law and standards.

2. Nothing in this Convention shall affect:

(a) The rights and obligations of States, consistent with the Charter of the United Nations, regarding the consent to entry of persons onto their territories; or

(b) The obligation of United Nations and associated personnel to act in a manner consistent with the terms of the mandate of a United Nations operation.

Article 22

Dispute settlement provisions

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by all or part of paragraph 1 of this article. The other

States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 23

Signature

This Convention shall be open for signature by all States, until _____ 199__ , at the United Nations Headquarters in New York.

Article 24

Ratification, acceptance or approval

This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Article 25

Accession

This Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 26

Entry into force

1. This Convention shall enter into force _____ days after _____ instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the _____ instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the _____ day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 27

Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect _____ months following the date on which notification is received by the Secretary-General of the United Nations.

Article 28

Notification by the Secretary-General

The Secretary-General of the United Nations shall inform all States, inter alia:

(a) Of signature to this Convention, of the deposit of instruments of ratification, acceptance, approval or accession in accordance with articles 23, 24 and 25 and of notifications made under articles 22 and 27;

(b) Of the date on which this Convention will enter into force in accordance with article 26.

V. RECOMMENDATION CONCERNING THE CONTINUATION OF THE WORK

29. Bearing in mind paragraph 5 of General Assembly resolution 48/37, in which the Assembly had recommended that a working group be re-established at its forty-ninth session in the framework of the Sixth Committee in the event that further work was required for the elaboration of the draft convention, the Committee recommends to the General Assembly that it re-establish a working group in the framework of the Sixth Committee during the next session of the Assembly, which would meet for a two-week period, preferably in October or November, to continue consideration of the revised negotiating text and of proposals relating thereto.

Notes

1/ For the membership of the Ad Hoc Committee at its first session, see A/AC.242/INF/1; for the membership of the Ad Hoc Committee at its second session, see A/AC.242/INF/2 and Add.1.

2/ For a summary of that debate, see A/AC.242/2, paras. 18-25.

3/ Also reproduced in A/AC.242/2, sect. II.

4/ For the text of the amendments and proposals see annex II to the present report.

5/ A summary of the discussion is to be found in A/AC.242/2, paras. 33-159.

6/ A summary of the discussion is to be found in A/AC.242/2, paras. 160-171.

7/ See A/AC.242/L.18.

ANNEX I

Summary of the Working Group's debate at the second session of the Ad Hoc Committee

Article 1-2

1. Article 1-2, as contained in the consolidated negctiating text, reads as follows:

"Scope of application and definitions

"1. This Convention applies in respect of United Nations and associated personnel and United Nations operations, as defined in paragraph 2 of this article.

"2. For the purposes of this Convention:

"(a) 'United Nations personnel' means:

"(i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation;

"(ii) Other officials and experts on mission of the United Nations and its specialized agencies who are present in an official capacity in the area where a United Nations operation is being conducted;

"(b) 'Associated personnel' means:

"(i) Persons assigned by a Government or an intergovernmental organization with the agreement of the competent organ of the United Nations;

"(ii) Persons engaged by the Secretary-General of the United Nations or by a specialized agency;

"(iii) Persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency;

to carry out activities directly connected with a United Nations operation;

"(c) 'United Nations operation' means:

"(i) An operation for the purpose of maintaining or restoring international peace and security established by the competent organ of the United Nations and conducted under its authority;

"(ii) An operation for the purpose of providing emergency humanitarian assistance established by the competent organ of the United Nations, if the General Assembly decides that the Convention is applicable due to the existence of exceptional risk to the life or liberty of United Nations and associated personnel;

"(d) 'Host State' means a State in whose territory a United Nations operation is conducted;

"(e) 'Transit State' means a State, other than the host State, in whose territory United Nations personnel and associated personnel are in transit or temporarily present in connection with a United Nations operation.

"3. This Convention shall not apply to United Nations and associated personnel participating in a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in respect of which any such personnel are engaged as combatants in an international armed conflict of the kind referred to in common article 2 of the Geneva Conventions of 12 August 1949."

2. A number of delegations considered this text to be a good basis for further discussion. Others, however, reserved their position thereon.

3. There was a proposal to present the two ideas reflected in the above text in two distinct articles: one addressing the question of the scope of the convention, which could consist of paragraphs 1 and 3 and also include the provision on the entry into force of the convention referred to in paragraph 115 below, and the other dealing with definitions and consisting of paragraph 2. With regard to paragraph 1, the proposal was made to replace the words "and United Nations operations" by the words "participating in United Nations operations." Objections were made in regard to that proposal. Another proposal was to insert the phrase "Except as provided for in paragraph 3" at the beginning of the paragraph. The point was also made that the paragraph was unnecessary.

4. Regarding paragraph 2, subparagraph (a) (i), the proposal was made to add the expression "in accordance with the mandate given by the competent organ of the United Nations" after the words "Secretary-General of the United Nations". Another proposal was to redraft the subparagraph, inserting the concepts of consent of the host State and status-of-forces agreement (see annex II, sect. A). As for subparagraph (a) (ii), the view was expressed that the personnel mentioned therein was already protected under existing instruments on privileges and immunities, and that the subparagraph should therefore be deleted.

5. With regard to paragraph 2, subparagraph (b), there was the view that, as drafted, it unduly broadened the scope of application of the convention, and that it was therefore necessary to add a provision allowing for reservations with regard to the various categories of personnel to which the convention would be applicable (see annex II, sect. R). The view was also expressed that the personnel mentioned in subparagraph (b) could not operate in the territory of a State without its consent. Regarding subparagraph (b) (i), there were doubts concerning the inclusion, in the category "associated personnel", of persons assigned by a Government since, it was argued, such persons were already covered under the category "United Nations personnel". Reservations were, however, expressed in this respect. Clarification was sought as to the meaning of the term "competent organ of the United Nations" in subparagraph (b) (i). Concerning subparagraph (b) (iii), the view was expressed that non-governmental organizations should be excluded from the scope of the convention. There was also a suggestion to delete references to specialized agencies in both subparagraphs (b) (ii) and (b) (iii).

6. With regard to paragraph 2 (c), some delegations found the text acceptable as a basis for further negotiations. Others, however, felt that the proposed definition was too broad. They further expressed the view that the convention should only cover United Nations operations mandated by the Security Council and carried out under its command and control and that such operations should be conducted with the consent of the host State and in accordance with a status-of-forces agreement. According to this view, operations mandated by the Security Council but carried out under the command and control of States should be excluded from the scope of application of the convention. Some delegations expressed the view that the convention should cover only those operations conducted under the command and control of the United Nations.

7. As to subparagraph (c) (i), a number of delegations felt that the organs of the United Nations competent to mandate an operation should be identified. In this connection, it was suggested to redraft the subparagraph so as to distinguish between two categories of operations: those mandated by the Security Council for the purpose of maintaining peace and security and carried out under its authority and those mandated by the General Assembly for the purpose of maintaining peace and security and carried out under its authority. Proposals were made to reflect the view of some delegations that all operations authorized by the Security Council should be covered. A view was expressed that under Article 25 of the Charter of the United Nations, Member States had agreed to accept and carry out the decisions of the Security Council, and that therefore, in the implementation of operations authorized by the Council, the question of the consent of the host State did not arise.

8. With regard to subparagraph (c) (ii), the point was made that it should not be limited to operations for the purpose of providing emergency humanitarian assistance. It was also stated that the clause whereby the General Assembly would decide on the application of the convention to a particular operation was unacceptable inasmuch as the application of a treaty was governed by the law of treaties and should not depend on a decision of a political organ. The suggestion was made to redraft the clause in question so as to provide for a factual determination by the General Assembly as to whether a particular operation involved an exceptional risk - a determination which would trigger the application of the convention. Some delegations expressed the view that subparagraph 2 (c) (ii) should be deleted because it unduly broadened the scope of application of the convention. Emphasis was also placed on the need to reflect the concept of consent of the host State in this subparagraph.

9. The definitions of "host State" and "transit State" in subparagraphs (d) and (e) were considered acceptable.

10. As for paragraph 3, a number of delegations favoured its retention. It was suggested to reformulate it so as to make it clear that the same law applied to all units and all personnel. To that end, it was suggested that the paragraph should read as follows (see annex II, section O):

> "This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations when any of its personnel are engaged as combatants in an international armed conflict of the kind referred to in common article 2 of the Geneva Conventions of 12 August 1949."

11. Some delegations felt that the scope of the paragraph should be broadened so as to include all operations mandated by the Security Council under

Chapter VII of the Charter, irrespective of whether such operations were covered by common article 2 of the Geneva Conventions of 1949.

12. Another approach was to reformulate the paragraph as follows:

> "The present Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations and in which United Nations personnel may be involved as combatants against forces operating in circumstances where international humanitarian law is applicable."

13. The view was expressed that the paragraph should be redrafted in a manner which would clearly state that various categories of personnel, including military personnel, involved in different types of United Nations operations and undertaking activities other than coercive military action would fall within the scope of the convention. International humanitarian law would therefore be applicable whenever military personnel of the United Nations operations were engaged in combat with organized armed forces having an identifiable command structure, carrying arms openly and controlling part of the territory of the host State.

14. The view was also expressed that paragraph 3 should not be limited to international armed conflicts and it was suggested that the reference to common article 2 should be deleted, and only a general mention of the Geneva Conventions retained. This suggestion gave rise to objections.

Article 3

15. Article 3, as contained in the consolidated negotiating text (A/AC.242/1994/CRP.13) read as follows:

> "Identification
>
> "1. States Parties shall recognize the right of United Nations personnel to display, within the territory in which a United Nations operation is conducted, the United Nations flag on United Nations headquarters, camps or premises, vehicles, vessels and otherwise as decided by the Secretary-General or his representative in the host State.
>
> "2. Vehicles, vessels and aircraft of the United Nations operation shall carry, as appropriate, a distinctive United Nations identification.
>
> "3. All United Nations and associated personnel shall be issued by the United Nations appropriate identification documents indicating their participation in, or affiliation to, the relevant United Nations activity in accordance with United Nations procedures and guidelines.
>
> "4. States Parties should take appropriate measures to prevent the unauthorized use of the United Nations flag, emblem or distinctive signs."

16. General comments on the article focused on the question of whether United Nations personnel should be required to wear distinctive signs or whether that decision should be left to the discretion of the Secretary-General or his representatives. Proponents of the former position argued that the wearing of distinctive markings was essential in ensuring the protection of United Nations

personnel. Delegations favouring a more flexible approach made the point that, as had been stated by the representative of the United Nations Security Coordinator, in certain situations, the display of distinctive markings and emblems increased the degree of risk to which United Nations personnel would be exposed. The point was made that a possible compromise solution was to include a provision based on the presumption of an obligation of identification, which would allow for exceptions in special circumstances.

17. Divergent opinions were also expressed on a related issue, namely, the connection between article 3 and the criminal law provisions of the Convention. Some delegations took the view that such provisions would not apply in situations where the victim of an attack did not wear distinctive markings, since the alleged offender could not have had knowledge of the status of such victim. Other delegations considered that the criminal law provisions should apply irrespective of whether the victim was wearing distinctive markings, adding that it was up to the national judge to determine the existence of intent in each specific case.

18. The point was made that article 3 raised a number of difficulties, and was not strictly necessary. Another suggestion was to replace the entire article by the following provision:

> "Vehicles, vessels, aircraft and other means of transport of the United Nations, as well as the personnel participating in a United Nations operation shall display the United Nations flag or other distinctive United Nations marking. Personnel shall also carry appropriate identification documents."

19. As regards paragraph 1, the view was expressed that it should also apply to associated personnel. Doubts were, however, raised as to whether it was proper to provide for the use of the United Nations flag by associated personnel. The point was made that, if the expression "United Nations and associated personnel" was used, the phrase "as appropriate" should be added thereto, in order to make it clear that the paragraph would apply to associated personnel in cases where there existed an agreement between the United Nations and relevant organizations regarding the use of the flag. There was, however, the view that the addition of the expression "as appropriate" was unnecessary, since a right of the United Nations was involved. The suggestion was made to replace the term "United Nations personnel" by "the United Nations". It was also pointed out that the paragraph would be clearer if a comma was inserted after the word "otherwise". Another proposal was to add a paragraph on the use of the emblem of the United Nations operation by associated personnel.

20. While it was recognized that the United Nations enjoyed an exclusive right regarding identification, various substitutes were proposed for the expression "in the host State", namely "in consultation with the host State", "in cooperation with the host State" or "in agreement with the host State". However, the view was expressed that the host State should not be involved in the exercise of a right by the United Nations and it was therefore considered preferable to leave the paragraph unchanged in that respect. It was suggested that the sentence be put in the passive voice, so that it would be addressed to all concerned parties, and not only States parties. Objections were, however, raised in that regard, on the grounds that a binding legal instrument should state clearly on whom it imposed obligations and that such instrument could only be addressed to subjects of international law. The proposal was made to replace the phrase "the territory in which a United Nations operation is conducted" with the expression "the host State and the transit States" and to replace the term

"host State" by the expression "the States concerned" at the end of the paragraph. It was further proposed to replace the term "otherwise" by "elsewhere" or "other property".

21. With respect to paragraph 2, the view was expressed that the obligation contained therein should also apply to United Nations personnel. In order to make it clearer that paragraphs 2 and 3 dealt with separate issues, it was suggested that the term "identification" be replaced by the term "emblem". Delegations supported the retention or deletion of the words "as appropriate", depending on their position regarding the advisability of imposing obligations on the United Nations with regard to identification.

22. The view was expressed that paragraph 3 did not appear to cover personnel defined in article 1, paragraph 2 (a) (ii) of the consolidated negotiating text, and that that inconsistency should be corrected. In that connection, the suggestion was made to end the paragraph after the word "documents". It was observed that the United Nations could issue identification documents to associated personnel, as envisaged in the paragraph, without authorizing such personnel to use the United Nations emblem. It was suggested that the term "activity" be replaced by "operation". There was also a proposal to add the expression "in consultation with the host State" at the end of the paragraph.

23. There was the view that paragraph 4 should also impose obligations on the United Nations regarding the unauthorized use of its flag and emblem. The remark was, however, made that that obligation was primarily incumbent upon States, which had to enact appropriate legislation. It was suggested to delete the paragraph, since Member States already had obligations in this area, irrespective of the Convention. There was a proposal that reference be made to General Assembly resolution 92 (I) entitled "Official seal and emblem of the United Nations". It was also proposed that the sentence be put in the passive voice, but the result of such redraft was considered too vague for a binding legal instrument. Another suggestion was to replace the word "should" by "shall".

Article 4

24. Article 4, as contained in the consolidated negotiating text, read as follows:

"Privileges and immunities of United Nations personnel

"1. The host State and the United Nations shall conclude as swiftly as possible an agreement on the status of the operation and all personnel engaged in the operation, on the basis of the Convention on the Privileges and Immunities of the United Nations of 1946 and other existing international instruments, covering, inter alia, military and police personnel of national contingents assigned to the United Nations operation, who shall have the privileges and immunities specifically provided for in such agreement.

"2. Pending the conclusion of such agreement the host State shall respect fully the international status of the operation and its personnel."

25. Some delegations felt that the article was unnecessary. In their view it did not add anything to existing rules on privileges and immunities with respect

to personnel involved in United Nations operations. Others, favoured the retention of the article as a way of encouraging host States to conclude agreements with the United Nations on operations to be conducted in their territory. It was also noted that certain privileges and immunities were part of the protection mechanism envisaged by the convention. Some delegations expressed the view that the article should indicate that measures taken by States for the safety of United Nations personnel should be in conformity with domestic law.

26. As regards paragraph 1, some delegations suggested to replace, in the third line, the words "on the basis of" by "taking into account", in order to avoid giving the impression that bilateral agreements could not differ from the 1946 Convention.

27. It was also suggested to replace, in the fourth and fifth lines, the words "existing international instruments" by "relevant (or applicable) international instruments".

28. As regards the links between article 4 and article 1 on scope and definition, it was noted that the reference to personnel in paragraph 1 should be replaced by "military, police or civilian personnel" to conform with article 1, paragraph 2 (a) (i) as contained in the consolidated negotiating text. It was also noted that article 1 should not refer to "all" personnel since not all such personnel were entitled to privileges and immunities. In that context, it was pointed out that article 4, paragraph 1, referred to all personnel "engaged" in an operation and therefore included only the personnel defined in article 1, paragraph 2 (a) (i). In addition, it was noted that paragraph 1 of article 4 did not expand the scope of application of privileges and immunities, since it specifically provided that United Nations personnel enjoy such privileges and immunities as were provided in the agreement between the United Nations and the host State.

29. Concern was expressed that article 4 created obligations for States not parties to the Convention, which might lead to complications.

30. As regards paragraph 2, there was a general support for its deletion since its subject-matter was covered by article 8.

Article 4 bis

31. A proposal was made for a new article (article 4 bis) which read as follows (see annex II, sect. T):

> "Without prejudice to the privileges and immunities enjoyed by United Nations personnel or associated personnel under applicable international treaties, the transit State shall take appropriate steps to ensure the unimpeded transit of United Nations personnel and associated personnel and their equipment."

32. The article was intended to promote assistance to United Nations personnel when such personnel had to transit through third States in connection with the conduct of a United Nations operation.

33. Some delegations supported an article of that nature, while others expressed concern that here again obligations were being imposed on States that might not be parties to the future convention and therefore suggested the

deletion of the article. The point was made that, under ordinary rules of treaty interpretation, the convention could not bind a State which was not party to it. A suggestion to replace the words "transit State" by "States Parties" was objected to on the grounds that it would wrongly equate the obligations of transit States with those of the host State in article 4.

34. It was observed that the word "ensure" in the third line would impose a heavy burden on the transit State and should be replaced by "facilitate". But there was also the view that the word "facilitate" would require the State to take positive steps and thus impose an even greater burden on transit States.

35. It was also suggested: (a) to delete the opening clause of the article, because it was viewed as unclear; (b) to include the requirement of consent of the transit State; (c) to delete the reference to associated personnel since such personnel did not enjoy privileges and immunities; (d) to clarify whether the term "transit" was confined to single entry or included multiple entries; (e) to specify that "transit" was for the purposes of a United Nations operation; and (f) to merge article 4 bis with article 4.

Article 5

36. Article 5, as contained in the consolidated negotiating text, reads as follows:

"Respect for laws and regulations of the host State

"1. Without prejudice to their privileges and immunities and the requirements of their duties, United Nations and associated personnel shall:

"(a) Refrain from any action or activity incompatible with the impartial and international nature of their duties;

"(b) Respect the laws and regulations of the host State.

"2. The Secretary-General or his representative shall take all appropriate measures to ensure the observance of these obligations."

37. Article 5 was viewed by a number of delegations as well balanced and conveying a politically useful message. Various suggestions were however made with a view to improving the text.

38. The clause "Without prejudice ..." was considered as unnecessary by some delegations on the ground that United Nations and associated personnel enjoyed privileges and immunities to a very limited extent if at all. It was suggested to reformulate the clause as follows: "Without prejudice to such privileges and immunities as they may enjoy ...".

39. A suggestion to reverse the order of subparagraphs (a) and (b) met with a wide measure of support, as did also a proposal to add in subparagraph (b) a reference to the transit State. A suggestion to provide, in a new subparagraph (c), for the duty of United Nations and associated personnel not to interfere in the internal affairs of the host State gave rise to doubts as the underlying idea was implicit in present subparagraph (a).

40. The proposal was made (see annex II, sect. W) to include in article 5 a sentence reading:

> "United Nations personnel shall observe and respect human rights as reflected in the United Nations Covenants, applicable rules of international humanitarian law and, where relevant, to the United Nations criminal justice standards."

The proposal attracted a measure of sympathy but its formulation and placement were viewed as calling for further reflection. The question was asked what the consequences would be if United Nations personnel failed to observe the norms referred to in the text and concern was voiced that a linkage might be established between the duty to observe those norms and the entitlement to the protection provided for by the future convention. It was noted that United Nations personnel would need to know the precise rules they would be obligated to follow. Several delegations suggested that the underlying idea be incorporated in article 6.

41. Doubts were expressed as to the appropriateness of an all-embracing reference to the International Covenants on Human Rights as those instruments covered many matters irrelevant to the present context. The mention of applicable rules of international humanitarian law - an aspect which, it was noted, was dealt with in article 6 - was similarly queried. The remark was made that as long as the United Nations was not involved in an armed conflict, humanitarian law did not come into the picture. The reference to the United Nations criminal justice standards was supported by some members who considered it as a useful reminder to the police component of peace-keeping operations but was viewed by others as out of place in the context of the convention under elaboration.

Article 5 bis

42. A proposal was made for a new article 5 bis (see annex II, sect. E) which read as follows:

> "Nothing in this Convention shall be construed as to permit the functional activities of United Nations personnel to go beyond the mandate approved by a resolution of the Security Council or that of the General Assembly."

43. Some delegations supported the underlying idea. Others expressed concern over a possible linkage between the proposed new article and the entitlement to protection under the future convention. The remark was also made that it was difficult to conceive of an interpretation of the convention allowing United Nations personnel to go beyond their mandate and that the proposal raised the question of who would be entitled to determine whether a particular mandate had been exceeded. Concern was expressed in this connection that national judges might be called upon to interpret resolutions of the Security Council. Other comments included the remark that the reference to the General Assembly should be deleted and the observation that the idea reflected in the text might possibly find room in article 6.

Article 6

44. Article 6, as contained in the consolidated negotiating text, read as follows:

"Applicability of international humanitarian law

"Nothing in this Convention shall in any way affect the application of international humanitarian law and international human rights law in relation to the protection of United Nations operations and personnel or the responsibility of such personnel to respect such law."

45. The point was made that article 6 had been drafted in terms of a saving clause and should therefore be placed at the end of the convention. This change of placement, it was argued, would further ensure that no connection would be made between the applicability of the criminal law provisions of the convention and the issue of respect of international humanitarian law and human rights by United Nations personnel. There was the suggestion to place the article in the preamble. But there was also the view that article 6 could be interpreted as undermining well-established rules of customary law in the areas of international humanitarian law and human rights law, and that it should therefore be deleted. Attention was drawn to the fact that the title of the article did not fully correspond to its content. The suggestion was made that the article should also apply to associated personnel.

46. There was the view that the expression "international human rights law" was too broad. In this connection, it was proposed that reference be made to specific instruments, such as the International Covenant on Civil and Political Rights, in order to be more precise. However, such an approach towards precision was objected to by those who found it to be too restrictive. Besides, it was also pointed out that it was inappropriate to make reference in the convention to instruments to which not all States were parties. There was the view that the expression contained in the article, as drafted, was adequate, since reference was made to norms of customary law. Other suggestions were to use expressions such as "norms of international law relating to human rights" or "relevant international human rights instruments" or "universally recognized standards of human rights". It was also proposed to delete the reference to human rights law.

47. A proposal was made (see annex II, sect. I) to replace article 6 by the following provision:

"Nothing in this Convention shall in any way affect the application of international humanitarian law to which the host State is a party in relation to the protection of United Nations operations and personnel or the responsibility of such personnel to respect such law. The United Nations will enter into a status-of-forces agreement with the host State, specifying the laws applicable."

Doubts were expressed, however, with respect to this proposal, on the grounds that international humanitarian law was, to a large extent, customary law, which was therefore applicable irrespective of whether a host State was a party to specific instruments.

Article 7

48. Article 7, as contained in the consolidated negotiating text (A/AC.242/1994/CRP.13), read as follows:

"Right of self-defence

"Nothing in this Convention shall be construed so as to derogate from the right to act in self-defence."

49. No comments were made on the article.

Article 8

50. Article 8, as contained in the consolidated negotiating text, read as follows:

"Respect for international character

"States Parties and any authority exercising actual control over territory in which a United Nations operation is conducted shall respect the exclusively international character of the responsibilities of United Nations personnel."

51. In general there were no objections to the substance of the article. Some delegations expressed concern about the use of the words "any authority exercising actual control over territory." In their view, such a language might be interpreted as granting some recognition to non-State entities and also impose treaty obligations on entities which were not subjects of international law, and should therefore be deleted. To resolve this problem, suggestions were made to redraft the article in the passive form and preferably place it in the preamble. In that regard, it was noted that obligations could be imposed on non-State entities through Security Council resolutions mandating a particular operation, but not through a treaty conducted by States. It was also proposed to include a new article on the application of the convention to non-State entities (see para. 120 below and annex II, sect. W) or to make reference in the preamble to an authority exercising actual control over the territory in which a United Nations operation was being conducted.

52. It was also suggested to add, in the second line, the words "and protect" after the word "respect" and to insert a reference to "associated personnel".

53. Some delegations preferred the version of the article originally proposed by New Zealand and Ukraine (A/AC.242/L.2).

54. One delegation suggested the deletion of the article, which in its view reproduced paragraph 2 of Article 100 of the Charter out of context and without reference to paragraph 1 of that same provision.

Article 9

55. Article 9, as contained in the consolidated negotiating text, read as follows:

"Duty to ensure the safety and security of United Nations personnel

"1. States Parties shall take all appropriate measures to ensure the safety and security of United Nations personnel. In particular, States Parties shall take all appropriate steps to protect United Nations personnel who are deployed in their territory from attacks or other acts of violence referred to in article 11 of this Convention.

"2. States Parties shall cooperate with the United Nations and other States Parties, as appropriate, in the implementation of this Convention, particularly in any case where the host State is unable itself to take the required measures.

"3. If a host State is not a State Party to this Convention, the States Parties shall nevertheless remain bound by its provisions in their relations."

56. A number of delegations stressed the importance of the article and supported its general thrust. The remark was made that articles 9 and 11 supplemented each other inasmuch as a breach of the obligations contained in article 9 would entail the international responsibility of the State while the commission of the acts listed in article 11 would bring about the criminal responsibility of the perpetrator. There was, however, a view that the article should be deleted and replaced by the following single paragraph (see annex II, sect. A):

"States parties shall, in accordance with status of forces agreements, take appropriate measures for the protection of United Nations personnel."

57. This redraft and the deletion of paragraphs 2 and 3 gave rise to objections. Concern was expressed that the entire convention would become subject to the consent of the host State.

58. The view was expressed that the obligation contained in paragraph 1 placed an undue burden on smaller States and could not be reasonably imposed in the case of operations taking place without the consent of the host State. The remark was on the other hand made that the term "appropriate" provided a safeguard for smaller States since it made the obligation into one of due diligence. In this connection, the view was expressed that the term "appropriate" should be interpreted by reference to internal law. Some delegations supported that this interpretation be spelled out in the text, which should clearly state that measures taken by States for the safety of United Nations personnel had to be in conformity with internal laws. Others took the opposite view.

59. Some representatives felt that paragraph 1 should apply to both United Nations and United Nations associated personnel. Others took the opposite view. Still others observed that this question arose in many articles and would have to be addressed once the provisions on the scope and the definitions of the convention had been agreed upon.

60. Some representatives felt that the paragraph should cover the entire process of deployment of personnel. Others objected to such a broadening of the text.

61. The proposal (see annex II, sect. W) seeking to insert in the text the following two sentences:

> "The United Nations and associated personnel, their material and premises shall not be made the object of attack. Likewise, any violent action designed to prevent the personnel from discharging their mandate is prohibited."

met with a wide measure of support even though some delegations reserved their position thereon. While one delegation objected to the reference to material and premises, others pointed out that the United Nations personnel depended on material and premises for their protection. Reference was made in this context to the provisions of the Geneva Conventions on medical and civil defence personnel.

62. It was suggested to draft the proposed addition in the form of an obligation of State parties and to include it in paragraph 1.

63. As regards paragraph 2, it was suggested to delete the words "as appropriate". This suggestion was supported by some delegations but objected to by others, which viewed the phrase as a useful qualifier, bearing in mind that the cooperation of all States parties might not be required in all cases.

64. It was also suggested to delete the end of the paragraph from the word "particularly ...". This suggestion was criticized as amputating the text from one of its essential elements.

65. Paragraph 3 gave rise to objections on the part of some delegations which viewed it as incompatible with the law of treaties or as confusing in its content and placement. Other delegations, however, supported its retention, pointing out that it would reinforce the protection afforded by the convention to United Nations personnel. A view was also expressed that the provision in question could be moved to the final clauses or be included in the preamble.

Article 9 bis

66. Article 9 bis, as contained in the consolidated negotiating text, read as follows:

> "Duty to release or return United Nations personnel captured or detained
>
> "If United Nations personnel engaged in a United Nations operation are captured or detained, they shall be immediately released and returned to United Nations or other appropriate authorities, and pending release they shall be treated in accordance with the highest standards of human rights and the principles and spirit of the Geneva Conventions of 1949 relating to the treatment of prisoners of war."

67. The point was made that the article should also apply to associated personnel. It was suggested that an additional sentence be added at the end of the article reading as follows: "Such personnel shall not be subjected to interrogation and, when armed, shall not have their arms confiscated." The suggestion was also made that this phrase be inserted after the word "detained" followed by the word "and". Doubts were, however, expressed in regard to the

proposed phrase. The suggestion was made that the expression "for acts taken in performance of an enforcement or peace-keeping mission" be inserted after the word "detained". In this connection, the point was made that the use of the term "enforcement" might conflict with the provisions of article 1, paragraph 3, of the consolidated negotiating text, which excluded certain operations from the scope of application of the convention. Doubts were, however, expressed regarding such an interpretation. Another suggestion was to replace the proposed phrase by the expression "for acts carried out in the course of a United Nations operation". A further suggestion was to insert in article 9 bis a reference to article 1, paragraph 2 (c) (i) of the consolidated negotiating text, but objections were raised in regard to this proposal. Reservations were expressed with respect to the phrase "highest standards of human rights", and it was proposed to replace it by the phrase "universally recognized standards of human rights" or "generally accepted standards of human rights". The suggestion was made that the phrase "relating to the treatment of prisoners of war" be deleted. Objections, were, however, raised concerning this suggestion.

68. A proposal was made for a new article 9 ter (see annex II, sect. L) which read as follows:

"Jurisdiction with respect to criminal offences which may be committed by United Nations personnel

"Personnel participating in a United Nations operation are subject to the exclusive jurisdiction of their respective Member States with respect to any criminal offences which may be committed by them during the operation."

69. Many delegations, while supporting the idea behind the article, did not find it acceptable for inclusion, as drafted, in the convention. Some delegations found the reference to "Member States" unclear. Others felt that the article implied that United Nations personnel enjoyed immunity from jurisdiction of the host State in respect of any offence committed in the host State. They found such a provision too sweeping. It was also noted that, under the domestic laws of some States, a court could not exercise jurisdiction if the offence was committed outside the territory of that State and in such cases United Nations personnel committing an offence in a host State would not be punished.

Article 10

70. Article 10, as contained in the consolidated negotiating text, read as follows:

"Prevention of crimes against United Nations personnel

"States Parties shall cooperate in the prevention of the crimes set out in article 11, particularly by:

"(a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;

"(b) Exchanging information in accordance with their national law and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes."

71. A proposal to insert in the chapeau of the article the words "in accordance with the status of forces agreement" after the word "cooperate" was supported by some representatives, who felt it essential that the obligations of States parties be clearly spelled out in a formal agreement, but was opposed by others who objected to the whole convention being subjected to the consent of the host State.

72. A suggestion to place article 10 after article 12 for reasons of logic was viewed as unobjectionable.

Article 11

73. Article 11, as contained in the consolidated negotiating text, read as follows:

"Crimes against United Nations personnel

"1. The international commission of:

"(a) A murder, kidnapping or other attack upon the person of liberty of any United Nations personnel;

"(b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations personnel likely to endanger his/her person or liberty;

"(c) A threat to commit any such attack;

"(d) An attempt to commit any such attack;

"(e) An act constituting participation as an accomplice in any such attack or attempt to commit such attack, including organizing, ordering or inciting others to commit or attempt to commit such attack

shall be made by each State Party a crime under its national law.

"2. Each State Party shall make these crimes punishable by appropriate penalties which shall take into account their grave nature."

74. A reformulation of the article which involved drafting and substantive changes was proposed (see annex II, sect. J). The substantive changes consisted in:

(a) Removing the reference to liberty from subparagraph (b) and reformulating the subparagraph as follows:

"(b) An attack by resorting to violence directed against property and likely to endanger the person in question";

(b) Eliminating the reference to threat;

(c) Covering both United Nations and associated personnel;

(d) Simplifying the provision on complicity following the model of the Montreal Convention;

(e) Making paragraph 2 into a separate article 11 bis.

75. Some representatives considered that, generally speaking, the proposed reformulation improved the text. Doubts were however expressed on some of its aspects.

76. The inclusion of a reference to "associated personnel" was supported by some delegations but considered as premature by others, pending agreement on the definition of the term in question.

77. The proposed reformulation of subparagraph (b) gave rise to doubts, particularly as regards the elimination of the reference to liberty and the use of the word "property" which, it was observed, raised the question of ownership. In order to limit the scope of the subparagraph, it was suggested to insert "gravely" before "endanger".

78. The elimination of the reference to threat was supported by some delegations, bearing in mind that under most extradition treaties the offence had to be of a sufficient degree of gravity to be extraditable. Other delegations insisted on retaining the concept of threat, which was to be found in all anti-terrorist conventions, and observed that prosecutorial discretion would take care of concerns relating to the required degree of gravity of the offence. It was suggested to limit the scope of the article to grave threat. As far as threat and attempt are concerned, it was suggested to limit their coverage in the convention to cases of a grave and serious nature.

79. The suggested reformulation of subparagraph (e) gave rise to reservations and emphasis was placed on the need to cover all forms of participation. Attention was also drawn in this context to a proposal made at the first session to delete the latter part of subparagraph (e), from the word "including".

80. Other comments concerning both the original text and the proposed reformulation included:

(a) The remark that a synthetic definition might be preferable to an enumeration;

(b) The suggestion to replace "kidnapping" - a concept unknown to some legal systems - by "hostage-taking" - a notion defined at the international level;

(c) The observation that it was important to retain the phrase "under its national law" in paragraph 1.

Article 12

81. Article 12, as contained in the consolidated negotiating text, read as follows:

"Establishment of jurisdiction

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 11 in the following cases:

(a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State.

"2. A State Party may also establish its jurisdiction over any such crime when it is committed:

(a) By a stateless person whose habitual residence is in that State; or

(b) With respect to a national of that State; or

(c) In an attempt to compel that State to do or abstain from doing any act.

"3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

"4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 11 in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to article 16 to any of the States Parties referred to in paragraphs 1 and 2 above.

"5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law."

82. With respect to paragraph 2, there was a proposal to limit the optional establishment of jurisdiction under that paragraph to the State of nationality of the victim (see annex II, section J). Reservations were expressed regarding that proposal, and attention was drawn in that connection to the relevant provisions of the International Convention against the Taking of Hostages and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. The view was expressed that the convention should not provide for the exercise of jurisdiction by the State of nationality of the victim, since that would constitute an infringement on the sovereignty of the host State. Objections were raised in respect of that remark.

83. As to paragraph 4, a proposal was made to redraft the latter part of the paragraph, after the word "person", along the lines of the relevant provision of the European Convention on the Suppression of Terrorism, so that it would read: "after receiving a request for extradition from a State Party whose jurisdiction is based on a rule of jurisdiction existing equally in the law of the requested State". Doubts were, however, expressed with respect to that proposal, on the grounds that it departed significantly from the precedent established in a number of anti-terrorism conventions.

Proposal for a new article

84. Some delegations favoured the inclusion of an article providing for the obligation of sending States to establish jurisdiction in respect of offences committed abroad by their nationals who were United Nations personnel, in case the United Nations refused to waive the immunity of such personnel in favour of the host State (see annex II, sect. P). Otherwise, United Nations personnel who committed offences in the territory of a host State would, where the United Nations refused to waive their immunity, remain unpunished, thus leaving local victims without appropriate redress.

Article 13

85. Article 13, as contained in the consolidated negotiating text, read as follows:

"Communication of information

"1. Under the conditions provided for in its national law, the State Party in which a crime set out in article 11 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to the Secretary-General and, directly or through the Secretary-General, to all other States concerned all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

"2. Whenever a crime set out in article 11 has been committed, any State Party which has information concerning the victim and circumstances of the crime shall endeavour to transmit such information, under the conditions provided for in its national law, fully and promptly to the Secretary-General and the State or States concerned."

86. Some delegations found the references to "all other States concerned" in paragraph 1 and "States concerned" in paragraph 2 unclear and suggested that States parties be merely required to address communications to the Secretary-General, who would then transmit the information to interested States or States concerned.

87. Other delegations questioned that suggestion on the grounds that the article dealt with judicial cooperation among States and should be couched in broad terms. It was also pointed out that, as currently drafted, the text gave States the option to communicate information through the Secretary-General rather then directly.

Article 14

88. Article 14, as contained in the consolidated negotiating text, read as follows:

"Measures to ensure prosecution or extradition

"1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the

appropriate measures under its national law to ensure that person's presence for the purpose of prosecution or extradition.

"2. Measures taken in accordance with paragraph 1 above shall be notified without delay to the Secretary-General and, either directly or through the Secretary-General, to:

"(a) The State where the crime was committed;

"(b) The State or States of which the alleged offender is a national or, if such person is a stateless person, in whose territory that person has his/her habitual residence;

"(c) The State or States of which the victim is a national; and

"(d) All other States concerned.

"3. Any alleged offender shall be entitled:

"(a) To communicate without delay with the nearest appropriate representative of the State or States of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, which that person requests and is willing to protect that person's rights;

"(b) To be visited by a representative of that State or those States."

89. It was proposed (see annex II, sect. J) to include in paragraph 2 the words "in conformity with national law" after "notified", to delete the references to stateless persons, to eliminate paragraph 2 (d) and also to eliminate paragraph 3, bearing in mind that the obligations imposed by that paragraph were well known and did not have to be repeated.

90. Most delegations preferred the original version of the article in the negotiating text. Support was however expressed for the inclusion of a reference to "national law" in paragraph 2. As regards paragraph 3, most delegations supported its retention. A suggestion was made to move paragraph 3 to article 18.

91. A suggestion was also made to replace the words "Upon being satisfied that" in paragraph 1 by the word "Where".

Article 15

92. Article 15, as contained in the consolidated negotiating text, read as follows:

"Prosecution of alleged offenders

"The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the

same manner as in the case of an ordinary offence of a grave nature under the law of that State."

93. It was proposed to reformulate the end of the text from the words "for the purpose of prosecution" as follows:

... "so that legal proceedings may be instituted if there are grounds under its national law. The requesting Party shall be informed of action taken in compliance with its request.",

drawing inspiration from the European Convention on Extradition.

94. Several delegations felt that the last sentence of the original text should be eliminated as it duplicated paragraph 2 of article 11, involved an element of interference in the internal affairs of States and suggested bad faith on the part of the authorities. Some among them favoured the deletion of the sentence or its replacement by the last sentence of the reformulation referred to above.

95. Objections were raised concerning the first part of the reformulation in question, more specifically the phrase "if there are grounds", on the grounds that it created a loophole and contradicted the principle of universality of prosecution contained in article 12.

96. A suggestion to replace "shall ... submit ... the case ... for the purpose of prosecution" by "shall prosecute" met with objections and emphasis was placed on the need to retain an element of prosecutorial discretion, as had been done in all anti-terrorist conventions elaborated under the auspices of the United Nations.

97. With reference to both the original text and the proposed reformulation, it was proposed to eliminate the mention of extradition and to provide for trial of the offender under the law of the host State concerned.

Article 16

98. Article 16, as contained in the consolidated negotiating text, read as follows:

"Extradition of alleged offenders

"1. To the extent that the crimes set out in article 11 are not extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.

"2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided by the law of the requested State.

"3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the procedural provisions and the other conditions of the law of the requested State.

"4. Each of the crimes set out in article 11 shall be treated, for the purposes of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 12, paragraph 1."

99. A proposal was made to revise paragraph 4 of the article (see annex II, sect. K), bearing in mind that, in addition to the States referred to in paragraph 1 of article 12 which were under an obligation to establish their jurisdiction, a second category of States referred to in paragraph 2 of the same article had the possibility of establishing their jurisdiction. The proposed revision of paragraph 4 was intended to bring those two categories of States within the scope of article 16. That proposal was generally supported. A suggestion was made to replace the last three words of the proposed revised text of paragraph 4 by "which has established jurisdiction pursuant to paragraphs 1 and 2 of article 12" for additional clarity.

100. A few delegations were of the view that the offender had to be subject to the jurisdiction of the State where the crime was committed and that extradition should not be provided for. They therefore favoured the deletion of the whole article.

Article 17

101. Article 17, as contained in the consolidated negotiating text, read as follows:

"Mutual assistance in criminal matters

"1. States Parties shall afford each other, in accordance with their respective laws, the greatest measure of assistance in connection with investigations undertaken or proceedings brought in respect of the crimes set out in article 11, including the supply of all evidence at their disposal necessary for the proceedings.

"2. The provisions of paragraph 1 above shall not affect obligations concerning mutual assistance embodied in any other treaty."

102. A proposal was made to add a new paragraph 1 bis (see annex II, sect. K), taking into account the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex) and to provide an indicative list of the forms of judicial assistance that States should afford each other. While some delegations found the new paragraph useful, others took a different view. They pointed out that the Convention was one in a long series of "prosecute or extradite" treaties, none of which contained a provision of the nature proposed and that the inclusion of the proposed provision in the present context would create uncertainty as to the proper interpretation of existing treaties. Most delegations favoured the text of article 17 as contained in the consolidated negotiating text.

103. There was also a suggestion that the idea contained in the proposal could be taken on board by inserting a paragraph in article 14 similar to paragraph 2 of article 12 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and replacing the clause "in accordance with their respective laws" by "in accordance with their national legislation".

Article 18

104. Article 18, as contained in the consolidated negotiating text, read as follows:

"Fair treatment for alleged offenders

"Any person regarding whom proceedings are being carried out in connection with any of the crimes set forth in article 11 shall be guaranteed fair trial and full protection of the rights of the alleged offender at all stages of the proceedings."

105. There was a proposal to redraft the article, which would thus consist of two paragraphs. Paragraph 1 would read:

"States parties shall guarantee fair trial and full protection of the rights of the alleged offender at all stages of the proceedings."

Paragraph 2 would begin with the words "inter alia", followed by the text of article 14, paragraph 3, as contained in the consolidated negotiating text. Another suggestion was to add the following phrase at the end of the article: "in accordance with the norms and standards of the United Nations in the area of human rights and the treatment of prisoners". There was a proposal to add the terms "investigations or" before the word "proceedings", used twice in the article. There was also the view that the article should remain unchanged.

Article 19

106. Article 19, as contained in the consolidated negotiating text, read as follows:

"Notification of outcome of proceedings

"The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General, who shall transmit the information to other States Parties."

107. No comments were made on this article.

Article 20

108. Article 20, as contained in the consolidated negotiating text, read as follows:

"Dissemination

"The States Parties undertake to disseminate this Convention as widely as possible and, in particular, to include the study thereof, as well as relevant provisions of international humanitarian law, in their programmes of military instruction."

109. No comments were made on this article.

Articles 20 bis and 21

110. Article 21, as contained in the consolidated negotiating text, read as follows:

"Dispute settlement provisions

"1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

"2. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

"3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."

111. It was proposed to include immediately before article 21 an article 20 bis, providing for the holding of consultations in case of disputes arising out of the application or interpretation of the convention, and to reformulate the opening part of article 21 accordingly (see annex II, sect. N), the underlying idea being to resort to lengthy and costly arbitration or judicial proceedings only after an attempt at settling the dispute through consultations had been made. It was suggested to reflect the idea, which several delegations considered a valuable one, in article 21 itself by including the words "or consultations" after the word "negotiation" in the first sentence of paragraph 1.

112. As for article 21, several delegations felt it preferable to retain it in its present form. Others favoured the deletion of paragraph 2 which, it was stated, nullified paragraph 1 and left unanswered the question of how disputes to which a reserving State was a party would be settled.

Proposal for a new article on compensation

113. Attention was drawn to a proposal for a new article on compensation (see annex II, sect. M). An article on the same subject had also been proposed at the first session of the Ad Hoc Committee (see annex II, sect. D).

114. Some delegations supported the idea underlying those proposals. Others reserved their position.

Proposal for a new article on the entry into force of the convention

115. Attention was drawn to a proposal on this question submitted at the first session of the Ad Hoc Committee (see annex II, sect. H) which read as follows:

> "This Convention will apply to future peace-keeping operations and not to existing ones."

116. Several representatives supported the proposal, with some suggesting that the underlying idea be reflected in the preamble. Other representatives felt that the proposed text would render the convention meaningless.

Proposal for a saving clause on consent

117. It was proposed to include a saving clause dealing with the question of consent to entry of personnel onto national territory (see annex II, sect. U).

Proposal for a new article on withdrawal of personnel

118. It was proposed to include in the preamble a paragraph laying down the right of States parties to withdraw, after consultations with the Secretary-General, their citizens participating in an operation (see annex II, sect. Q).

Final clauses

119. The final clauses (arts. 22 to 27), as contained in the consolidated negotiating text, read as follows:

"Article 22

"Signature

"This Convention shall be open for signature by all States, until _____ 199__, at the United Nations Headquarters in New York.

"Article 23

"Ratification, acceptance or approval

"This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

"Article 24

"Accession

"This Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

"Article 25

"Entry into force

"1. This Convention shall enter into force _____ days after _____ instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.

"2. For each State ratifying or acceding to the Convention after the deposit of the _____ instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the _____ day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

"Article 26

"Denunciation

"1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

"2. Denunciation shall take effect ____ months following the date on which notification is received by the Secretary-General of the United Nations.

"Article 26 bis

"Notification by the Secretary-General

"1. The Secretary-General of the United Nations shall inform all States, inter alia:

"(a) Of signature to this Convention, of the deposit of instruments of ratification, acceptance, approval or accession in accordance with articles 22, 23 and 24 and of notification made under articles 21 and 26;

"(b) Of the date on which this Convention will enter into force in accordance with article 25.

"Article 27

"Authentic texts

"The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States."

120. It was proposed to insert in the final clauses two new articles on the periodic review of the implementation of the convention and on the application of the convention to non-State entities (see annex II, sect. W). Strong concern was expressed by some delegations regarding the insertion of a provision on the application of the convention to a non-State entity, since such a provision could be understood as granting recognition to an entity which could not be a subject of international law.

ANNEX II

Amendments and proposals for new articles submitted at the first and second sessions of the Ad Hoc Committee

A. Proposals by India a/

1. Article 1

Delete paragraph 4.

2. Article 2

(a) Replace subparagraph (a) by the following:

"Persons deployed by the Secretary-General to participate in the United Nations peace-keeping operation established on the basis of consent of all host States and in accordance with the status-of-forces agreement".

(b) Clarify the term "associated civilian personnel" mentioned in article 2 (a) (iii).

(c) Delete subparagraphs (b) and (c).

3. Article 3

(a) Redraft the chapeau of article 3 in a way to authorize and require the Secretary-General to undertake activities mentioned in article 3 without obliging the host State to do the same.

(b) Replace the phrase "throughout the territory of the host State" in subparagraph (b) by the phrase "in the area of operations".

4. Article 4

Delete the phrase "generally recognized principles of international law" at the end of the article.

5. Article 6

The article should be redrafted to clarify that in the situation envisaged under article 6, the United Nations personnel remain under the protection of the Geneva Conventions of 1949 relating to the protection of victims of war.

6. Article 9

Delete paragraphs 2 and 3 and rephrase paragraph 1 as follows:

"States Parties shall, in accordance with status-of-forces agreements, take appropriate measures for the protection of United Nations personnel".

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a/ Initially submitted in relation to the joint proposal by New Zealand and Ukraine (A/AC.242/L.2 and Corr.1).

7. Article 10

Insert the words "in accordance with the status-of-forces agreement" after the word "cooperate" in the chapeau of the article.

8. Article 11

This article may be retained after suitable modification subject to the amendment proposed for article 2 above.

Retain the words "intentional" and "violent" in the chapeau and subparagraph (b), respectively; and delete the words "which includes organizing, or directing, or inciting others to commit any such attack" from subparagraph (e).

9. Article 12

Delete subparagraph 1 (c).

The provision that the troop-contributing country whose national has been allegedly attacked may assume jurisdiction for trying alleged offenders would be an infringement of the sovereignty of the host country.

10. Articles 14, 15 and 16

Delete all references to "extradition" wherever they appear.

The offender must be tried under the law of the host State concerned.

11. Article 21

In article 21 dealing with dispute settlement, reference to the jurisdiction of the International Court of Justice should be retained only if both or all the parties to the dispute are also party to its Statute and accept the jurisdiction of the Court with reference to the dispute concerned.

B. Proposal by Austria, Denmark, Finland, the Netherlands, Norway and Sweden b/

"Article ...*

"Basic protection and responsibility

"1. United Nations and associated personnel shall enjoy, as a minimum, protection from the following acts which shall remain prohibited at any time and in any place whatsoever:

"* The articles dealing with the establishment of jurisdiction over crimes against United Nations and associated personnel may refer directly to paragraph 1 of this article.

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b/ Initially submitted in relation to the joint proposal by New Zealand and Ukraine (A/AC.242/L.2 and Corr.1).

- Making the personnel, their objects and localities the target of attack;

- Detention of the personnel;

- Violence to the life, health or physical or mental well-being of the personnel, in particular:

  (i) Murder;

  (ii) Torture of all kinds, whether physical or mental;

  (iii) Rape;

  (iv) Mutilation;

  (v) The taking of hostages;

  (vi) Collective punishment;

- Attempt to commit any of the foregoing acts.

"2. If United Nations and associated personnel become engaged in an armed conflict [as a party to that conflict], the international rules applicable to such conflicts apply.

"Nothing in this Convention shall be construed so as to derogate from the responsibility of United Nations and associated personnel to respect international humanitarian law.

"3. The protection provided under the present Convention is without prejudice to that afforded by:

- Existing international agreements and generally recognized principles of international law concerning privileges and immunities of United Nations and associated personnel;

- The principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience."

C. Proposals by Denmark, Finland, Norway and Sweden c/

"Article 1. (Definitions)

"For the purposes of the present Convention:

"1. 'United Nations personnel' means any persons that is employed by, seconded to, on loan to, or subcontracted by the United Nations or any of its specialized agencies, other organs or programmes, as staff member or expert on mission, whether in civilian, police or military capacity.

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c/ Submitted in relation to the joint proposal by New Zealand and Ukraine (A/AC.242/L.2 and Corr.1).

"2. 'Associated personnel' means any person employed by, seconded to, on loan to or subcontracted by a governmental, intergovernmental, international or non-governmental entity to perform functions assigned to that entity by the United Nations or any of its specialized agencies, other organs or programmes, in a contract or an agreement with that entity.

"3. 'United Nations operation' means ... (definition only needed if the term is used in subsequent articles)

"4. 'Host State' means ...

"5. '(Alleged) offender' means ...

"Article 2. (Scope)

"This Convention shall apply in all situations when and where United Nations and associated personnel are deployed, be it in time of peace or during an armed conflict."

D. Proposals by the Russian Federation

Insert two new articles, as follows:

"In case of threat to life and security of the United Nations personnel resulting from serious violations of the present Convention or from the changing of the mandate of the United Nations operation, a State Party has a right, after consulting with the Secretary-General of the United Nations, to withdraw its citizens participating in such operation." d/

"The United Nations personnel participating in United Nations operations shall be entitled to just and equal compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations."

E. Proposal by China

Insert a new article, as follows:

"Confinement to the mandate approved by the United Nations resolutions

"Nothing in this Convention shall be construed as to permit the functional activities of the United Nations personnel to go beyond the mandate approved by a resolution of the Security Council or that of the General Assembly."

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d/ See also the proposal under sect. Q below.

F. Proposals by the United States of America e/

Insert the following in article 4 or article 9:

"States shall not detain United Nations personnel for acts taken in performance of an enforcement or a peace-keeping mission. If United Nations personnel engaged in such a mission are captured or detained, they shall be immediately released and returned to United Nations or other appropriate authorities, and pending release they shall be treated in accordance with the highest standards of human rights and the principles and spirit of the Geneva Conventions of 1949 relating to the treatment of prisoners of war."

Insert in article 2 a new paragraph 2, as follows:

"2. This Convention shall not apply where the operation was authorized by the Security Council as an enforcement action, the operation involves an international armed conflict to which common article 2 of the 1949 Geneva Conventions apply and the United Nations personnel are a party or otherwise engaged as combatants in the conflict." f/

G. Proposals by Guyana g/

Article 1

In paragraph 4, insert "whether natural or legal" after "person" in line 1. Insert "or has participated in the commission of" after "committed" in line 2.

Article 3

In subparagraph (a), replace "vessels" in line 2 by "vehicles".

Insert a new paragraph 2 reading:

"The fact that the property or personnel of the United Nations are not properly identified at the time of the commission of a crime shall not alone negate the criminal element of the act or omission, if there was reasonable certainty as to the special character and identity of that property or personnel".

Article 4

Replace "shall" in line 1 by "are under an obligation to".

Article 14

In paragraph 1, replace "persons's presence" in line 3 by "that person is brought before a court expeditiously".

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e/ Initially submitted in relation to the joint proposal by New Zealand and Ukraine (A/AC.242/L.2 and Corr.1).

f/ See also the proposal under sect. O below.

g/ Submitted in relation to the joint proposal by New Zealand and Ukraine (A/AC.242/L.2 and Corr.1).

Amendment to the proposal reproduced under section B above

The opening line of the proposal on "Basic protection and responsibility" could be redrafted more in keeping with the existing language of article 9 of the joint proposal by New Zealand and Ukraine, as follows:

"States Parties shall recognize a duty to ensure that United Nations and associated personnel enjoy, as a minimum ..."

This new article ideally should follow immediately after article 9.

H. Proposal by India

Insert a new article reading as follows:

"This Convention will apply to future peace-keeping operations and not to existing ones."

I. Proposal by India

Reword the article on applicability of international humanitarian law as follows:

"Applicability of international humanitarian law

"Nothing in this Convention shall in any way affect the application of international humanitarian law to which the host State is a party in relation to the protection of United Nations operations and personnel or the responsibility of such personnel to respect such law. The United Nations will enter into a status-of-forces agreement with the host State, specifying the laws applicable."

J. Proposals by France

"Article 11. Crimes against United Nations personnel

"1. The intentional commission of the following shall constitute a crime:

"(a) A murder, kidnapping or other attack directed against the person or liberty of any United Nations or associated personnel defined in article 2 of this Convention;

"(b) An attack, by resorting to violence, directed against property and likely to endanger the person in question.

"2. The following shall also constitute a crime:

"(a) An attempt to commit any of the crimes set out in paragraph 1 of this article;

"(b) Acting as an accomplice of a person who commits or attempts to commit any of those crimes."

"Article 11 bis. Sanctions

"Each State Party shall undertake to suppress the crimes defined in the preceding article by appropriate penalties which shall take into account their grave nature.

"Article 12. Establishment of jurisdiction

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 11 in the following cases:

"(a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

"(b) When the alleged offender is a national of that State.

"2. A State Party may also establish its jurisdiction over any such crime when the victim is a national of that State.

"3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

"4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over a crime set out in article 11 in cases where the alleged offender is present in its territory and it does not extradite such person after having received a request for extradition from a State Party whose jurisdiction to prosecute is based on a jurisdiction rule which also exists in the law of the requested State.

"5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

"Article 14. Measures to ensure prosecution or extradition

"1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its national law to ensure that person's presence for the purpose of prosecution or extradition.

"2. Measures taken in accordance with paragraph 1 above shall be notified in conformity with the national law of the States Parties to the Secretary-General and, either directly or through the Secretary-General, to:

"(a) The State where the crime was committed;

"(b) The State of which the alleged offender is a national;

"(c) The State of which the victim is a national.

"Article 15. Prosecution of alleged offenders

"The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, upon the request of the requesting Party, the case to its competent authorities so that legal

proceedings may be instituted if there are grounds under its national law. The requesting Party shall be informed of action taken in compliance with its request."

K. Proposals by Australia

"Article 16:

"4. If necessary, the crimes set out in article 11 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also within the jurisdiction of the State Party requesting the extradition.

"Article 17:

"1. States Parties shall afford each other, in accordance with their respective laws, the greatest measure of assistance in connection with investigations undertaken or proceedings brought in respect of the crimes set out in article 11, including the supply of all evidence at their disposal necessary for the proceedings.

"1 bis. The type of assistance referred to in paragraph 1 above shall include as necessary:

"(a) Taking of evidence and statements from persons;

"(b) Assisting in the availability of detained persons or others to give evidence or assist in investigations;

"(c) Effecting the service of judicial documents;

"(d) Executing search and seizures;

"(e) Examining objects and sites;

"(f) Providing information and evidentiary items;

"(g) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records; and

"(h) Assisting in the location, restraint and forfeiture of the proceeds of the crimes set out in article 11.

"2. The provisions of paragraph 1 above shall not affect obligations concerning mutual assistance embodied in any other treaty."

L. Proposal by the Russian Federation

"Jurisdiction with respect to criminal offences which may be committed by United Nations personnel

"Personnel participating in a United Nations operation are subject to the exclusive jurisdiction of their respective Member States with respect to any criminal offences which may be committed by them during the operation."

M. Proposal by Pakistan

New article

"Compensation

"In the event of death, disability, injury or illness attributable to the performance of official duties on behalf of the United Nations, United Nations personnel participating in United Nations operations shall be entitled to compensation by the United Nations. The United Nations shall make equitable arrangements in this regard and shall ensure expeditious reimbursement."

N. Proposals by Belarus

"Article ...

"Consultations

"If a dispute between two or more States Parties arises out of the application or interpretation of the present Convention, consultations between them shall be held upon the request of any of them. At the request of any of the parties to the dispute, the United Nations shall be invited to join in the consultations."

In the dispute settlement article, insert the following new paragraph:

"1. If a dispute is not disposed of as a result of the consultations referred to in article ... within one month from the date of their inception, any of the parties may request that it be submitted to arbitration."

O. Proposal by the United States of America

Paragraph for inclusion in the article on:

"Scope of application and definitions

"3. This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations when any of its personnel are engaged as combatants in an international armed conflict of the kind referred to in common article 2 of the Geneva Conventions of 12 August 1949." h/

P. Proposal by Thailand

"States Parties undertake to establish their jurisdiction over the crimes committed in the host or transit State by the personnel that they have assigned to participate in a United Nations operation and to submit the alleged offenders to their competent authorities for the purpose of

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h/ See also the proposal under sect. F above.

prosecution upon request of the States in which the crimes were committed, in the cases where the immunity of the alleged offenders was not waived."

Q. Proposal by the Russian Federation

"Preamble

"Recognizing the right of the State Party to withdraw, after consultations with the Secretary-General of the United Nations, its citizens participating in such operation,"

R. Informal text proposed by Poland

"Article 1

"Scope of application and definitions

"1. ...

"2. ...

"3. ...

"4. This Convention shall not apply where the crime against United Nations and associated personnel is committed within a single State, the victim and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State.

"5. Each State Party may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound with respect to any of the categories of personnel referred to in paragraph 2 (b) of this article which it may specify. The other States Parties shall not be bound by paragraph 2 (b) of this article with respect to any such categories as regards any State Party that has made such a reservation."

S. Proposal by Austria

"1. 'Host State' means a State in whose territory the United Nations operation is conducted and, with the exception of article 4, a transit State.

"2. 'Transit State' means a State in whose territory United Nations personnel and associated personnel are in transit or temporarily present in connection with the conduct of a United Nations operation, other than the State in whose territory the operation is conducted."

T. Proposal by Austria

"Art. 4 bis

"Without prejudice to the privileges and immunities enjoyed by United Nations personnel or associated personnel under applicable international

treaties, the transit State shall take appropriate steps to ensure the unimpeded transit of United Nations personnel and associated personnel and their equipment."

U. Proposal by the United States of America

"Nothing in this Convention shall affect the rights and duties of States, consistent with the Charter of the United Nations, with regard to consent to entry of persons onto their territories."

V. Informal text proposed by the United States of America

"Article 1

"Scope of application and definitions

"(c) 'United Nations operation' means:

"(i) An operation authorized by the Security Council;

"(ii) An ad hoc observer mission or an emergency humanitarian assistance mission authorized by the General Assembly where the General Assembly determines that the situation poses a risk to the safety of participating United Nations or associated personnel and states in its authorizing resolution that the present Convention is applicable;"

W. Proposals by the Nordic Countries

1. In the article on "Respect for laws and regulations of the host State", insert:

"The United Nations personnel shall observe and respect human rights, as reflected in the United Nations covenants, applicable rules of international humanitarian law and, where relevant, the United Nations criminal justice standards."

2. In the article on "Duty to ensure the safety and security of United Nations personnel," insert:

"The United Nations personnel, their material and premises shall not be made the object of attack. Likewise, any violent action designed to prevent the personnel from discharging their mandate is prohibited."

3. In the article on "Duty to release or return United Nations personnel captured or detained", insert:

"Such personnel shall not be subjected to interrogation and, when armed, shall not have their arms confiscated."

4. In the Final Provisions insert:

"Article ...

"Review meetings

"Within ... years after the entry into force of this Convention, the Depositary shall convene a meeting of the States Parties to review the implementation of the Convention as well as problems encountered with regard to its application. Further review meetings shall be convened by the Depositary at the request of one or more of the States Parties and upon the approval of the majority of the said Parties.

"Article ...

"Application of the Convention to non-State entities

"An authority exercising actual control over the territory in which a United Nations operation is conducted may undertake to apply the present Convention by means of a unilateral declaration addressed to the Depositary.

"Such declaration shall upon its receipt by the Depositary have immediate effect.

"The deposit of such a declaration shall not in any way affect the legal status of the entity or the territor it controls."

X. Proposal by Canada

"Preamble

"The States Parties to this Convention,

"Recognizing that United Nations operations are impartial and international in nature and that such operations are conducted exclusively in the common interest of the international community,

"Bearing in mind the impermissibility of hostile attacks against, or other mistreatment of, personnel who represent the international community,

"Deeply concerned over the growing number of fatalities and injuries among United Nations and associated personnel resulting from deliberate hostile acts,

"Believing that the commission of such hostile acts is a matter of grave concern to the international community,

"Recognizing that existing measures of protection for United Nations and associated personnel are inadequate to prevent such hostile acts,

"Convinced therefore that there is an urgent need to adopt appropriate and effective measures for the prevention and punishment of such acts,

"Have agreed as follows:"

Y. Written comments by Israel on the basic texts under consideration

For the comments by Israel on the basic texts under consideration, see A/AC.242/L.18.